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OGC HAS REVIEWED.

MEMORANDUM FOR THE RECORD

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LEGAL

1. On 15 December 1954 [redacted] Assistant General Counsel, CIA, and the undersigned visited Mr. E. C. Gardiner, General Counsel of the Army Chief of Finance, to continue the discussion on the settlement of [redacted] dual compensation problem.

2. Mr. Gardiner started off by reading the full text of a cable message which the Army Chief of Finance had dispatched to the Army Finance Center, Indianapolis, after [redacted] initial visit. In this message the Army Chief of Finance ordered the stopping of any investigation of [redacted] required the immediate transmittal of [redacted] complete file from Indianapolis, and requested further to be informed as to what caused the initial investigation and just how much information had been accumulated by Army Finance Center or other Government agencies. Mr. Gardiner then read the reply from Indianapolis, which acknowledged receipt of the Army Chief of Finance message, and stated that no investigation of [redacted] had been initiated. The actual file on [redacted] transmitted from Indianapolis was quite slim and did not contain more than six pieces of paper, most of which is known to us since it consists of copies of recent correspondence between [redacted] and the Indianapolis Finance Center. In a letter of transmittal, the Army Center at Indianapolis pointed out that the only information available to indicate [redacted] employment by the U. S. Government was the form card of November 1953 which required a statement under oath by [redacted] that he was or was not an employee of the U. S. Government. In replying, [redacted] evaded the issue and stated that the restrictions of Section 212 of the Retired Pay Act of 1932 are not applicable to him since his disability was combat incurred.

3. Mr. Gardiner stated after the reading of these three communications that he had undertaken considerable research in prior rulings of the Comptroller General and felt that the case was enough of a border-line matter that a decision by the Comptroller General of the U. S. would have to be obtained. Consequently, the suspension of [redacted] retired pay would have to remain in effect. [redacted] expressed that he appreciated the difficult legal situation of the case and tried to determine with whom of the Comptroller General Mr. Gardiner intended to deal. It was finally agreed, because of the sensitivity of the case and the fact that CIC had to restrict its dealings to cleared officials in other government agencies, the case would be brought to the attention of CIA-cleared persons in the Comptroller General's office. During the conversation of dual compensation cases in general, Mr. Gardiner made it quite clear that he considered so much as he has been told of [redacted] case as quite weak when viewed against the provisions of the Retired Pay Act of 1932, and he left no doubt that as far as he was concerned, he has been and is a U. S. Government employee, the provisions in his CIA contract to the contrary notwithstanding. The crucial point for legal determination of [redacted] status seems to be, according to Mr. Gardiner, the extent of supervision and control that CIA exercises over him or a contract agent in similar circumstances. In considering the narrow interpretation Mr. Gardiner gave this phrase, there seems to be no doubt that [redacted] in effect is a U. S. Government employee.

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4. Even though [REDACTED] had with him a letter addressed to Mr. Gardiner setting forth some of the details and provisions of [REDACTED] contract, this letter was not turned over to Mr. Gardiner since a decision will not be forthcoming from him. It was agreed that the General Counsel, CIA, would get in touch with the General Counsel, Comptroller General, which would be followed by a meeting including representatives of the Army Chief of Finance. It was further agreed that [REDACTED] case would be submitted for ruling to the Comptroller General as a hypothetical case without name but using the actual circumstances.

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[REDACTED]
EE/FIG

20 December 1954

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1- [REDACTED]
1- EE/FIG